



## FEDERAL COMMUNICATIONS COMMISSION

[MB Docket No. 22-122; DA 22-285; FR ID 78964]

**Arm & Rage, LLC, WJBE(AM), Powell, TN**

**AGENCY:** Federal Communications Commission.

**ACTION:** Notice.

**SUMMARY:** In this document, the Federal Communications Commission (Commission) commences a proceeding to determine whether the license of Arm & Rage, LLC (A&R) for WJBE(AM), Powell, Tennessee, Facility ID No. 59693 should be revoked pursuant to sections 312(a) and (c) of the Communications Act of 1934, following the felony conviction of its sole member, Joseph Armstrong (Armstrong) for filing a false federal income tax return. The hearing will also consider the effect, if any, of A&R's late reporting of the conviction and late-filing of other information required to be placed in its online public inspection file.

**DATES:** A&R, in person or by counsel, shall file with the Commission, by April 11, 2022, a written appearance stating that it will appear on the date fixed for hearing and present evidence on the issues specified therein. Persons desiring to participate as parties in the hearing shall file a petition for leave to intervene not later than **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN FEDERAL REGISTER]**.

**ADDRESSES:** Federal Communications Commission, 45 L Street, NE, Washington, DC 20554.

**FOR FURTHER INFORMATION CONTACT:** Albert Shuldiner, Media Bureau, (202) 418-2721.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's *Hearing Designation Order, Order to Show Cause, and Notice of Opportunity for Hearing*, MB Docket No. 22-122, adopted and released on March 21, 2022. The full text of this document is available online at <http://apps.fcc.gov/ecfs/>. The full text of this document is also available in alternative

formats (computer diskette, large print, audio record, and Braille). Persons with disabilities who need documents in these formats may contact the FCC by email: [FCC504@fcc.gov](mailto:FCC504@fcc.gov) or phone: 202-418-0530 or TTY: 202-418-0432.

## Synopsis

1. In this *Hearing Designation Order, Order to Show Cause, and Notice of Opportunity for Hearing*, the Federal Communications Commission (Commission) commences a hearing proceeding before the Administrative Law Judge to determine whether the license of A&R for WJBE(AM), Powell, Tennessee should be revoked pursuant to sections 312(a) and (c) of the Act 47 U.S.C. 312(a), (c), following the felony conviction of its sole member, Armstrong. The conviction raises the question under the Commission's *Character Qualifications Policy Statement* of whether Armstrong, and hence A&R, possesses the requisite character qualifications to remain a licensee of the Commission.

2. On August 8, 2016, a jury convicted Armstrong of one felony count of fraud and false statements under 26 U.S.C. 7206(1) for filing a false federal income tax return. The record of the criminal trial reflects that the jury heard evidence that Armstrong, an elected representative in the Tennessee legislature, purchased cigarette tax stamps in 2007 and sold them at a profit of approximately \$330,000 following the legislature's increase in the state's cigarette tax, but did not include the profit on his federal 2008 individual income tax return. On January 25, 2017, Armstrong was sentenced to three years of probation, which included six months of house arrest, ordered to pay \$99,943 in restitution to the federal government and a \$40,000 fine, and required to perform 300 hours of community service.

3. Pursuant to § 1.65(c) of the Commission's rules, 47 CFR 1.65(c), A&R was required to report the conviction as an adverse finding by April 1, 2017, *i.e.*, the anniversary of license renewal filings for Tennessee. A&R submitted a document informing the Commission of the conviction (Adverse Finding Report) on April 14, 2017, after the due date. A&R, on March 18, 2020, also attached the same Adverse Finding Report to a timely application for

license renewal, File No. 0000108293 (Renewal Application), to explain its answer of “No” to the question as to whether A&R could certify that there had been no adverse findings bearing on the character qualifications of A&R and its principal. A&R also responded “No” to the Renewal Application’s question of whether it had timely uploaded required documents to its online public inspection file. Specifically, A&R acknowledged that it had neither filed Biennial Ownership Reports as required by § 73.3615 of the Commission’s rules, 47 CFR 73.3615, nor timely uploaded issues/programs lists as required by § 73.3526 of the Commission’s rules, 47 CFR 73.3526.

4. Armstrong’s felony conviction raises the question under the Commission’s *Character Qualifications Policy Statement* of whether he, and thus A&R, has the character qualifications to remain a Commission licensee. The Commission and the courts have recognized that the FCC relies heavily on the honesty and probity of its licensees in a regulatory system that is largely self-policing. The felony of which Armstrong was convicted—fraud and false statements—is centered upon criminally dishonest conduct. Armstrong directed that dishonesty at a federal agency by making false statements on a federal tax form. His omission of material financial information (a large profit), resulted in substantial inaccuracy of information that he was federally required to report (total income on which tax liability is based). In light of Armstrong’s past willingness to conceal information from another federal agency in violation of the law, we are unable to conclude on the record before us that Armstrong’s criminal conviction is not disqualifying. In addition, A&R’s late reporting of Armstrong’s conviction to the Commission, along with its self-reported and purportedly inadvertent failure to file ownership reports and to upload issues/programs lists between 2018 and 2020, when considered along with the felony, heighten our concern as to whether we can rely upon A&R to provide complete and accurate information to the Commission. Because Armstrong’s conviction, separately, and together with A&R’s admitted rule violations, raises questions under the Commission’s *Character Qualifications Policy Statement*, we designate for hearing appropriate issues to

determine whether Armstrong, and by extension, A&R, possesses the requisite character qualifications to remain a Commission licensee and whether the Commission should revoke the license for WJBE(AM).

5. The Commission will hold A&R's Renewal Application in abeyance pending the outcome of the hearing. If the underlying license is revoked, the Renewal Application will be dismissed as moot. If the license is not revoked, the Commission would need to determine whether the Renewal Application should be granted, denied, or granted subject to appropriate terms and conditions, as described in section 309(k)(2) of the Act, 47 U.S.C. 309(k)(2).

6. All parties shall file a timely notice of appearance in accordance with the Rules. Any person or entity seeking status as a party in this proceeding must file a petition to intervene or petition for leave to intervene in accordance with § 1.223 of the Commission's rules, 47 CFR 1.223.

7. Accordingly, IT IS ORDERED that, pursuant to sections 312(a) and 312(c) of the Communications Act of 1934, as amended, 47 U.S.C. 312(a), (c) and § 1.91(a) of the Commission's rules, 47 CFR 1.91(a) and pursuant to authority delegated under §§ 0.61 and 0.283 of the Commission's rules, 47 CFR 0.61, 0.283, Arm & Rage, LLC IS HEREBY ORDERED TO SHOW CAUSE why its authorization for WJBE(AM), Powell, Tennessee SHOULD NOT BE REVOKED in a proceeding before the FCC Administrative Law Judge, at a time and place to be specified in a subsequent order, upon the following issues:

- (a) To determine the effects, if any, of Joseph Armstrong's felony conviction on his qualifications and thus the qualifications of Arm & Rage, LLC to be a Commission licensee;
- (b) To determine the effects, if any, of Arm & Rage, LLC's failure to report the conviction by the April 1, 2017 due date, to upload required information to an online public inspection file, and to file timely ownership reports on its qualifications to be a Commission licensee; and

(c) To determine whether, pursuant to section 312 of the Communications Act of 1934, as amended, 47 U.S.C. 312, the license of Arm & Rage, LLC for WJBE(AM), Powell, Tennessee should be revoked.

8. IT IS FURTHER ORDERED that, pursuant to section 312(c) of the Communications Act of 1934, as amended, 47 U.S.C. 312(c), and § 1.91(c) of the Commission's rules, 47 CFR 1.91(c), in order to avail itself of the opportunity to be heard and the right to present evidence at a hearing in these proceedings, Arm & Rage, LLC and/or Joseph Armstrong, in person or by an attorney, *shall file* on or before April 11, 2022 a written appearance stating its intention to appear at the hearing and present evidence on the issues specified above.

9. IT IS FURTHER ORDERED, pursuant to § 1.92(a) and (c) of the Commission's rules, that if Arm & Rage, LLC and/or Joseph Armstrong fails to file a written appearance within the time specified above, or has not filed prior to the expiration of that time a petition to dismiss without prejudice, or a petition to accept, for good cause shown, such written appearance beyond expiration of said 20 days, the right to a hearing shall be deemed waived. Where a hearing is waived, the Administrative Law Judge shall issue an order terminating the hearing proceeding and certifying the case to the Commission.

10. IT IS FURTHER ORDERED that the Chief, Enforcement Bureau, *is made a party* to this proceeding without the need to file a written appearance.

11. IT IS FURTHER ORDERED that, in accordance with section 312(d) of the Communications Act of 1934, as amended, 47 U.S.C. 312(d), and § 1.91(d) of the Commission's rules, 47 CFR 1.91(d), the burden of proceeding with the introduction of evidence and the burden of proof SHALL BE upon the Commission's Enforcement Bureau.

12. IT IS FURTHER ORDERED that a copy of each document filed in this proceeding subsequent to the date of adoption of this *Hearing Designation Order, Order to Show Cause, and Notice of Opportunity for Hearing* SHALL BE served on the counsel of record

appearing on behalf of the Chief, Enforcement Bureau. Electronic service on the Enforcement Bureau shall be made using the following email address: EBHearings@fcc.gov.

13. IT IS FURTHER ORDERED that copies of this *Hearing Designation Order, Order to Show Cause, and Notice of Opportunity for Hearing* SHALL BE sent via Certified Mail, Return Receipt Requested, and by regular first-class mail to Arm & Rage, LLC and Joseph Armstrong, 2340 Martin Luther King Ave., Knoxville, TN 37914 and James L. Winston, Esq., Rubin, Winston, Diercks, Harris & Cooke, LLP, P.O. Box 20036, Suite 700, Washington, DC 20036.

14. IT IS FURTHER ORDERED that the Secretary of the Commission shall cause to have this *Hearing Designation Order, Order to Show Cause, and Notice of Opportunity for Hearing* or a summary thereof published in the **Federal Register**.

FEDERAL COMMUNICATIONS COMMISSION

**Thomas Horan**

*Chief of Staff,*

*Media Bureau.*

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